

## REMARKS

Claims 1, 3, 5 – 7, 20 – 23, 26 and 27 were previously presented for examination in the present application and remain pending upon entry of this Amendment. Claims 31 – 34 are newly added.

Applicants appreciate the Examiner's granting of a telephone interview with Applicants' representatives on March 31, 2009. There were several topics discussed during the interview, which are summarized below.

Applicants first discussed the feature of claims 1, 6, and 20 regarding the "cross-pad" configuration of the fibrous tampon. In an attempt to address the Examiner's concerns as stated in the Advisory Action regarding the cross-pad feature, Applicants proposed the claim amendments listed above. The claims now more clearly establish that the outer layer(s) along with the inner layer(s) form a cross-pad configuration. This configuration is shown in Fig. 1, and described in the accompanying text. The Examiner agreed that this language distinguishes the relevant claims over the references of record, and specifically the device disclosed in the Hirschman reference.

Applicants next raised the issue of the claimed amount of malodor counteractant material, or glycerin, found in claims 1, 6, 20, and 27. Applicants first stated that the secondary reference, Bernardin, disclosed a maximum of six milligrams of perfume, and beyond that amount would be considered "overpowering." (col. 3, l. 10-11) Furthermore, Applicants argued that, as shown in Figs. 2 and 3, when the amount of malodor counteractant drops below 0.010 grams, or 10 milligrams, the odor-absorbing efficacy of the fibrous article drops precipitously. Thus, the lower claimed amount of about 0.010 grams is critical, and the amount disclosed in Bernardin can not be interpreted as reading on the claimed amounts. The Examiner found Applicants' arguments regarding the Bernardin reference persuasive. Since Bernardin expressly states that the maximum amount of perfume to be added to the tampon disclosed

therein is 6 milligrams, the lower limit of about 0.010 grams recited in the relevant claims supports their patentability over the Bernardin reference.

Lastly, Applicants raised the issue of the impermissibility of the combination of the cited references. Generally, Hirschman was cited for its cross-configuration, Bernardin was cited for the claimed amounts of perfume oil, Petrus was cited for disclosing glycerin as a lubricant and pectin as a deodorant in a tampon, and Yabrov was cited for disclosing that glycerin can be a deodorant. This combination is particularly needed to defeat the patentability of claim 26, which recites a malodor counteractant material comprising glycerin and at least one additional malodor counteractant material. Applicants asserted that one of ordinary skill in the art would have no reason to combine the cited references in this manner. Petrus fails to disclose two malodor counteractant materials, as required by claim 26, and there is no appreciation in Petrus that glycerin can be used as a malodor counteractant, despite its later date of issue. This argument will be discussed in further detail below.

The following rejections are those as stated in the Final Office Action dated September 4, 2008.

Claims 1 and 5 have been rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 3,690,321, to Hirschman, hereinafter "Hirschman," in view of United States Patent No. 3,830,237, to Bernardin et al., hereinafter "Bernardin." Applicants respectfully traverse this rejection. Claim 1 is independent.

Claim 1 is directed to a fibrous tampon for absorbing body fluids. The tampon comprises at least one inner layer having one or more malodor counteractant materials incorporated therein, and at least one outer layer that along with the at least one inner layer forms a cross-pad configuration. The one or more malodor counteractant materials is selected from the recited group, is present between about 0.01 grams to about 0.12 grams, and is in liquid form.

Hirschman is directed to a catamenial device including a tampon for insertion into the vaginal canal. (Abstract) The device includes a tampon portion 11, and a pad portion 12 that extends transversely to an axis of the tampon portion 11. The tampon portion 11 has grooves 14 cut into an end 13 thereof, so that the grooves 14 may carry fluids such as a deodorant. (col. 2, l. 22-39)

Bernardin is directed to a method for incorporating "small but effective" amounts of an odor-counteracting scent into a tampon. The scent is disposed in a pre-formed axial cavity in the base of the tampon. (Abstract)

As previously discussed, claim 1 now clarifies that the at least one outer layer along with the at least one inner layer of claim 1 form a cross-pad configuration. As discussed during the interview, neither Hirschman, nor Bernardin, nor the combination of the two, discloses or suggests this feature. The Advisory Action states that grooves 14 of Hirschman can be interpreted as the claimed inner layer, and that either of portions 11 or 12 can be interpreted as the claimed outer layer. As agreed during the interview, the present amendments to claim 1 render this interpretation of Hirschman moot. Grooves 14 clearly do not form a cross-pad configuration with either of portions 11 or 12.

In addition, as agreed during the interview, the claimed lower limit of about 0.01 grams (10 milligrams) of one or more malodor counteractant materials is a patentable feature over the cited combination of Hirschman and Bernardin. As previously discussed, Bernardin discloses that the perfume oil disclosed therein is present at a maximum amount of six milligrams. Any more would be considered "overpowering." (col. 3, l. 10-11) Thus, the amount of perfume oil found in Bernardin can not be determined to read on the claimed amount of one or more malodor counteractant materials disclosed in claim 1.

Applicants further note that the feature regarding the lack of ascorbic acid or its derivatives has been deleted from claim 1. This amendment was made earlier in the prosecution of the present application, and is not necessary to overcome the references of record. Thus, claim 1 should be interpreted without this feature.

Claim 1 is clearly patentable under 35 U.S.C. §103(a) over Hirschman in view of Bernardin. Claim 5 depends from claim 1, and is also patentable over this combination for at least the reasons provided above in support of the patentability of claim 1. Applicants respectfully submit that the rejection of claims 1 and 5 under 35 U.S.C. §103(a) as being unpatentable over Hirschman in view of Bernardin has been overcome, and request that it be withdrawn.

Claims 3, 6, 7, 20-23, 26, and 27 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Hirschman in view of Bernardin, in further view of United States Patent No. 5,417,224, to Petrus et al., hereinafter "Petrus." Applicants respectfully traverse this rejection. Claims 6, 20, 26, and 27 are independent.

Claim 3 depends from claim 1, and further recites that the one or more malodor counteractant materials is glycerin.

Petrus is directed to a tampon having one or more loops placed entirely through the tampon for ease of insertion and removal. (Abstract) The tampon 10 comprises a spherical member 12 having a "polymeric sponge-like structure." (col. 5, l. 20-23) In one embodiment, the tampon can have a lubricant such as glycerin. (col. 6, l. 41)

Petrus fails to cure the deficiency of Hirschman and Bernardin to disclose the fibrous of tampon of claim 1. Petrus is merely relied on to teach glycerin, and does not disclose a cross-pad configuration, or the amount of malodor counteractant material recited in claim 1. In addition, Petrus discloses glycerin as a lubricant, not as a malodor counteractant material, as required in claim 3. Therefore, for at least the reasons

provided above with respect to claim 1, claim 3 is patentable over Hirschman, in view of Bernardin, in further view of Petrus.

Claim 6 is directed to a fibrous tampon for absorbing body fluids. The tampon comprises at least one inner layer having liquid glycerin incorporated therein, and at least one outer layer that along with the at least one inner layer forms a cross-pad configuration. The liquid glycerin is present in an amount between about 0.01 grams to about 0.05 grams, and is naturally sourced.

As previously discussed, the cited combination of Hirschman and Bernardin fails to disclose or suggest the claimed at least one outer layer that along with the at least one inner layer forms a cross-pad configuration, as well as the claimed amount of glycerin. Petrus fails to cure this deficiency, and is not relied on to do so. Again, Petrus is merely relied on to teach the use of glycerin. Therefore, claim 6 is patentable over the cited combination of Hirschman, Bernardin, and Petrus, as is claim 7, which depends therefrom.

Claim 20 recites a fibrous tampon for absorbing body fluids. The fibrous tampon comprises, *inter alia*, a liquid glycerin present in an amount between about 0.01 grams to about 0.12 grams. As previously discussed, this feature is absent in the cited combination of references. Claim 20 is therefore patentable over Hirschman, Bernardin, and Petrus, as are claims 21-23, which depend therefrom.

Independent claim 26 recites a method of deodorizing a vaginal area. The method comprises applying to the vaginal area a multi-layered fibrous absorbent article having a malodor counteractant material. The malodor counteractant material, *inter alia*, comprises glycerin and at least one additional malodor counteractant selected from the recited group, and is incorporated in the multi-layered fibrous absorbent article between an inner layer and an outer layer.

Applicants respectfully submit that the cited combination of references is improper. The Final Office Action cites Hirschman, Bernardin, Petrus, and a fourth reference, United States Patent No. 4,880,417, to Yabrov et al., the latter for the notion that glycerin can be used as a malodor counteractant. One of ordinary skill in the art would have no reason to combine the four references in this matter.

Hirschman and Bernardin only disclose deodorants and perfume oils generally, without any disclosure or suggestion of glycerin. Petrus, as previously discussed, discloses glycerin as a lubricant, and relies on another material entirely as a deodorant, namely pectin. (col. 6, l. 51-52) Yabrov is the only one of the cited references that teaches glycerin as a deodorant. Petrus fails to appreciate this property of glycerin, despite the fact that it issued several years after Yabrov.

In addition, Yabrov only discloses a single deodorant, namely glycerin. The reason for this is that glycerin is particularly effective at dissolving hydrogen sulfide gas, which is advantageous in the application discussed in Yabrov, reducing odors associated with undesired anal discharge. (col. 4, l. 19-25) One of ordinary skill in the art would have no reason to combine the teachings of Yabrov and Petrus in the way espoused by the Final Action, since the device of Petrus is targeted for use in vaginal applications, and Yabrov is directed to reducing odors associated with anal discharge. Thus, the combination of cited references fails to disclose or suggest a malodor counteractant material comprising glycerin and at least one additional malodor counteractant, as required by claim 26.

Furthermore, claim 26 requires that the malodor counteractant material be incorporated in the multi-layered fibrous absorbent article between the inner and outer layer. Even if the cited combination of references did disclose glycerin and an additional malodor counteractant, these materials are clearly not incorporated between an inner and outer layer, as required in claim 26. Even if the grooves 14 of Hirschman are interpreted as an inner layer, the perfume is disposed within these grooves 14, and not between grooves 14 and either of portions 11 or 12. (col. 2, l. 37-39) There are no

layers at all in tampon 12 of Bernardin, and the perfume is disposed within an axial cavity 20 at the rear of tampon 12. (Fig. 1) Petrus does not disclose any layers at all, but rather a spherical tampon 10. (Fig. 1) Lastly, Yabrov discloses a layered anal pad. This pad, however, has glycerin disposed within an absorbing layer 7, which is in turn disposed within a semi-rigid shell 2, and then optionally an inner layer 6. This entire assembly is disposed within outer shell 1. (Fig. 1, col. 3, l. 53 – col. 4, l. 8) The glycerin in Yabrov is placed in the absorbing layer 7, and there is at least one additional layer between it and the outer shell 1. This is contrary to the requirement of claim 26 that the malodor be incorporated between the inner and outer layer.

Thus, the cited combination of references fails to disclose or suggest a malodor counteractant material that comprises glycerin and at least one additional malodor counteractant, and wherein the malodor counteractant material is disposed between an inner and outer layer. Claim 26 is therefore patentable over the cited combination of references.

Independent claim 27 recites a method of deodorizing a vaginal area. The method comprises the step of applying a fibrous absorbent article to the vaginal area. The fibrous article comprises, *inter alia*, glycerin in an amount of about 0.01 grams to about 0.05 grams. As previously discussed, the cited combination of Hirschman, Bernardin, and Petrus fails to disclose or suggest the claimed amount of glycerin recited in claim 27. Claim 27 is therefore patentable over Hirschman in view of Bernardin, in further view of Petrus.

Applicants respectfully submit that the rejection of claims 3, 6, 7, 20-23, 26, and 27 under 35 U.S.C. §103(a) as being unpatentable over Hirschman in view of Bernardin, in further view of Petrus, has been overcome, and respectfully request that it be withdrawn.

In view of the foregoing, Applicants submit that all claims present in this application patentably distinguish over each reference and the cited combination of references. Accordingly, Applicants respectfully request that this application be passed to allowance.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Charles N.J. Ruggiero", written over a horizontal line.

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